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## **Appendix E: Comments and Responses on the Draft Atlantic Billfish FMP Amendment**

### **A. National Standard 1 - Optimum Yield**

Comment BLF-1: NMFS violated National Standard 1 of the Magnuson-Stevens Act and NEPA by not including a viable rebuilding plan for blue and white marlin in the draft FMP amendment.

Response: NMFS disagrees. The draft FMP amendment contained elemental components for rebuilding on an Atlantic-wide basis. However, the final amendment more clearly defines the relationship between domestic management actions and international rebuilding alternatives. Domestic measures ensure compliance with the 1997 ICCAT recommendation. NMFS clarifies this rebuilding strategy in the final FMP amendment by including final actions to establish a foundation for development by ICCAT of a 10-year rebuilding plan. NMFS will work with ICCAT member nations to adopt a rebuilding program that meets the standards of the Magnuson-Stevens Act and the NSGs, including an appropriate rebuilding time period, targets, limits, and explicit interim milestones for recovery, expressed in terms of measurable improvements of overfished stocks. The final FMP amendment lists specific management measures that could be a part of the international strategy.

Comment BLF-2: NMFS should scrap the draft Atlantic billfish FMP amendment and develop a new document focusing on rebuilding overfished billfish stocks by reducing bycatch in the U.S. pelagic longline fishery.

Response: NMFS disagrees. The multidimensional focus of the draft FMP amendment addressed the 1997 ICCAT recommendation and the U.S. mandates under the Magnuson-Stevens Act and ATCA. The actions taken in the final FMP amendment are critical steps in the ICCAT process, formulating the basis for international regulations that will rebuild overfished billfish stocks. However, rebuilding overfished Atlantic billfish stocks is not possible solely by reducing or eliminating bycatch in the U.S. pelagic longline fishery due to the small percentage of mortality caused by U.S. vessels. The HMS FMP will be the primary tool for designing, analyzing and implementing management measures to control bycatch in association with all HMS commercial fisheries, including Atlantic billfish.

Comment BLF-3: The management measures included in the framework provisions should be dropped because they would allow NMFS to implement these regulatory actions without input from the Billfish Advisory Panel or from the public.

Response: NMFS disagrees. Both framework adjustment measures and proposed FMP amendments must go through extensive public and analytical review, including development and review by the APs. There is, in fact, relatively little difference in the timing requirements for developing and implementing a Secretarial amendment, and a frameworked rulemaking.

Comment BLF-4: Actions taken by the United States alone cannot sufficiently reduce billfish mortality levels Atlantic-wide to rebuild overfished billfish stocks. Therefore, management actions taken by NMFS, without the support and adoption by ICCAT, are a waste of time and money.

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Response: NMFS disagrees. While unilateral management action by the United States cannot rebuild overfished billfish stocks, the United States has been a leader in conservation of Atlantic billfish, and has taken actions (e.g., the 1988 Atlantic billfish FMP) to show our willingness to take the critical steps necessary to conserve these stocks. This fact has been a primary negotiation tool at ICCAT, and it is questionable whether the recent ICCAT actions (i.e., the 1997 and 1998 ICCAT recommendations) could have been possible without these efforts. Therefore, the final actions and framework provisions in the FMP amendment and HMS FMP will form the foundation for further negotiations that will follow the 2000 (marlins) and 2001 (sailfish) assessments.

Comment BLF-5: NMFS received comments supporting and opposing a ten-year recovery period. Comments against the ten-year recovery period include: the recovery time period of ten years is too long; a shorter time frame could be justified based on the life history characteristics of Atlantic blue and white marlin; the recovery to biomass rebuilding target within ten years is impossible without international cooperation by Atlantic commercial fishing operations; and rebuild overfished populations as quickly as possible, not in the maximum period allowed by law.

Response: NMFS maintains the recovery period of ten years in the final FMP amendment. Life history is not the sole consideration for determining recovery time period alternatives. The Magnuson-Stevens Act specifies that a recovery period be as short as possible, taking into account the status and biology of any overfished stocks of fish, as well as the needs of fishing communities, recommendations by international organizations in which the United States participates (e.g., ICCAT), and interactions of the overfished stock of fish with the marine ecosystem. The final guidelines for NS1 indicate that these factors may be used to adjust the rebuilding period up to ten years. NMFS proposed a ten-year recovery period to minimize negative impacts on recreational and commercial communities/entities. Agreements at ICCAT may dictate that rebuilding of Atlantic billfish may take up to 10 years, indeed even longer.

Comment BLF-6: The model used to generate recovery periods may provide overly optimistic projections of the time required for rebuilding.

Response: The non-equilibrium stock-production model (ASPIC) used to generate recovery periods was based on the best available science at the time the draft FMP amendment was developed. NMFS maintains these results in the final FMP amendment, but will review the applicability of this model following the 2000 (marlins) and 2001 (sailfish) SCRS stock assessments. Subsequently, modifications may be warranted in the recovery period or other components of the rebuilding plan.

Comment BLF-7: The MSSTs selected for Atlantic billfish in the draft FMP amendment are too low and should be more precautionary.

Response: NMFS agrees that the MSSTs selected for Atlantic billfish in the draft FMP amendment should be more precautionary. The formulation of MSST for Atlantic billfish using  $(1-M)B_{MSY}$ , where  $M$  is the instantaneous natural mortality rate, is a proxy for the minimum stock size at which rebuilding to the maximum sustainable yield level would be expected to occur

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within 10 years if the stock or stock complex were exploited at MFFT. Quantitative data necessary to calculate natural mortality rates are not available; however, reasonable values can be estimated based on life history parameters and age structure of the population. Estimates of  $M$  range from 0.05 to 0.15 for Atlantic blue marlin, from 0.1 to 0.2 for Atlantic white marlin, and from 0.2 to 0.3 for western Atlantic sailfish. The draft FMP utilized values near the lower-end of the precautionary range; however, based on further analyses, the MSST values selected for the final FMP amendment for Atlantic blue and white marlin and sailfish are  $0.95B_{MSY}$ ,  $0.85B_{MSY}$ , and  $0.75B_{MSY}$ , respectively.

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## **B. National Standard 2 -Use of Best Available Science**

Comment BLF-8: NMFS violates National Standard 2 by ignoring or inappropriately applying available scientific information in the draft FMP amendment

Response: NMFS disagrees. The draft FMP amendment used the most recent data available at the time of the plan's development. Scientific information and data sources used in formulation of the plan include the Marine Recreational Fisheries Statistical Survey, Large Pelagic Survey, Recreational Billfish Survey, Cooperative Tagging Center, Standing Committee for Research and Statistics stock assessments and reports, NMFS research/reports, as well as research funded by the agency and independent research, including publications in scientific journals, preliminary reports on ongoing research, and personal communication with experts in the field. NMFS has developed a comprehensive research and monitoring plan (October, 1998) to support the conservation and management of Atlantic HMS as required by 971(i)(b) of ATCA. The objective of this comprehensive research monitoring plan is to ensure that NMFS science is of the highest quality and that it advances the agency's ability to make sound management decisions.

Comment BLF-9: NMFS should limit regulatory changes to recommendations by committees comprising professional scientists, not by politicians, in order to reflect the best available science

Response: NMFS disagrees. The United States is bound by domestic and international law, such as the Magnuson-Stevens Act, ATCA, and ICCAT, which necessitate an interdisciplinary approach to fisheries management. The APs play an important role in advising NMFS not just on science, but on practical constraints, as well as social and economic impacts of various management alternatives.

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### **C. National Standard 3 -Management of Fishery Resources Throughout Their Range**

Comment BLF-10: NMFS received comments both supporting and opposing the extension of the management unit for Atlantic blue and white marlin to the entire Atlantic Ocean, and implementation of regulatory actions under ATCA. These comments include the following: the extension is an important step closing a loophole in the regulations that allows Atlantic billfish to be caught and sold south of 5°N; this measure unfairly restricts U.S. recreational anglers fishing in foreign waters, especially when fishing in foreign tournaments; U.S. commercial vessels operating under foreign contracts or in countries where all fish caught must be landed will be adversely affected; enforcement of these regulations would be impractical and costly for the relatively few U.S.-flagged commercial and recreational vessels operating in foreign waters that would be impacted by this proposed management measure.

Response: NMFS agrees with comments supporting the proposed preferred alternative to extend the management unit for Atlantic blue and white marlin to the entire Atlantic Ocean, and implementation of regulatory actions under ATCA. The expansion of the management unit to the entire Atlantic Ocean is consistent with NS 2 which requires that “Conservation and management measures shall be based upon the best scientific information available.” Further, expansion of the regulatory authority is supported by NS 3 that requires “To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.” Implementation of Atlantic billfish regulations under both the Magnuson-Stevens Act and ATCA will make these regulations applicable to all U.S. citizens and U.S.-flagged commercial and recreational vessels, regardless where fishing. NMFS disagrees that such application of the Atlantic billfish regulations is unfair and too restrictive on U.S. fishermen. Regulations will be much more effective if they are extended under the authority of ATCA to cover the operational area of U.S.-flagged vessels in the Atlantic Ocean. These vessels may need to apply for Exempted Fishing Permits (EFP) in order for the agency to collect necessary management information, and to prevent violations with U.S. law. Since the same vessels potentially catching billfish are also operating under other Atlantic-wide fishing prohibitions (North and South Atlantic swordfish) that require enforcement and monitoring, problems with additional enforcement of billfish regulations impacting U.S. commercial pelagic longline vessels operating in the Atlantic are expected to be minimal.

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#### **D. National Standard 4 -Fair and Equitable Allocation of Restrictions/Benefits Among Fishery Sectors**

Comment BLF-11: NMFS is apparently relying only on reductions in U.S. recreational landings to rebuild overfished billfish stocks, which is inconsistent with National Standard 4. The recreational billfish community is responsible for only a small portion of Atlantic-wide mortalities and has a record of voluntary conservation as evidenced by the high percentage of released billfish, yet the majority of management measures included by NMFS in the draft Atlantic billfish FMP amendment are being unfairly focused on recreational anglers.

Response: NMFS agrees that the recreational billfish community is responsible for only a small portion of Atlantic-wide mortalities and commends their voluntary conservation. However, NMFS disagrees that the management measures included in the draft Atlantic billfish FMP amendment were unfairly focused on recreational anglers. The draft FMP amendment specifically stated that the level of reductions in landings required to rebuild overfished billfish stocks will necessitate international cooperation; reduction or even elimination of all sources of U.S. billfish mortality alone is insufficient to achieve rebuilding as the United States is responsible for approximately 5 percent of the Atlantic-wide mortalities of marlin. Reductions of 2,443 mt from 1996 total Atlantic landings will be required to rebuild stocks of blue marlin and 638 mt for white marlin; the total U.S. reported mortality of Atlantic marlin during 1996 was 302.3 mt. The draft FMP amendment proposed actions to comply with the first-ever binding ICCAT recommendation for Atlantic blue and white marlin, requiring a reduction in *landings* (i.e., fish that are brought back to the dock vs. *catch* which includes fish discarded dead at sea) by at least 25 percent from 1996 levels. The final Atlantic Billfish FMP Amendment includes increases in minimum size limits in order to reduce landings; the 25 percent reduction in blue and white marlin landings will result in reductions of U.S. recreational landings of approximately 21,000 pounds; however, on a larger scale, this recommendation will result in nearly a 3.4 million decrease in Atlantic-wide marlin landings from 1996 levels by other ICCAT member countries. The 1997 ICCAT recommendation also requires improvement in monitoring, data collection and reporting in all Atlantic billfish fisheries.

Comment BLF-12: Continuing the prohibition on commercial landings of Atlantic billfish, while allowing recreational fishermen to land billfish, is unfair and discriminatory.

Response: NMFS disagrees. A fundamental element of the 1988 Atlantic billfish FMP was the prohibition of possession and sale of commercially caught billfish within the U.S. EEZ. Allowing recreational fishermen to land billfish is consistent with traditional usage of this fishery. A major objective of the FMP amendment is to develop a rebuilding plan for overfished billfish stocks, and although unilateral actions by the United States will not rebuild these highly migratory species, additional mortalities experienced on these stocks by allowing U.S. commercial harvest would run counter to the objectives of NS1 and for the FMP amendment. The Final FMP amendment retains the prohibition of possession and sale of commercially caught billfish.

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## E. National Standard 8 -Community Impacts

Comment BLF-13: Destin, FL, Port Aransas, TX, and other coastal towns were not included in the community analysis of the draft Atlantic billfish FMP amendment. The Atlantic billfish recreational fishery is an important component of these locations, therefore, these areas should be included in any analysis of economic and community impacts of management restrictions.

Response: NMFS agrees that some towns where the Atlantic billfish recreational fishery is an important component were not included in the community analysis of the draft Atlantic billfish FMP amendment. However, the billfish community profiles included in the draft FMP amendment are not intended as an exhaustive list of where recreational billfish angling is an important component of the local economy and culture, rather they provide a broad perspective on representative areas. Consistent with NS8, the final FMP amendment first identifies and describes *representative* Atlantic billfish communities (both on the basis of geographic location, gear-type and operational framework of the various components of the fishery) and then assesses their differing nature and the magnitude of the likely effects of this FMP amendment. The final FMP amendment also summarizes anticipated social impacts resulting from the implementation of the Atlantic billfish FMP amendment on a broader-scale, based on the comments received during the comment period for the draft FMP amendment and proposed rule (October 9, 1998 to March 12, 1999). Public hearings for the proposed rule to implement the draft Atlantic billfish FMP amendment were held in a wide range of locations (including Panama City, near Destin and Ft. Walton and Port Aransas) to collect comments from numerous billfish angling communities.

Comment BLF-14: Destin, Florida has changed an important billfish tournament to an all-release format based on the economic threat of a potential zero bag limit included in the proposed rule. If sponsorships and participation in the tournament decline because of the change to catch-and-release strategy, the local economy will be negatively impacted, as will charities that have historically received financial support from this event.

Response: NMFS evaluated thousands of comments on the issue of economic impacts of an adjustable bag limit and other measures included in the draft plan, some of which merited changes in the final FMP amendment. While the intent of the draft FMP amendment was not to cause severe impacts to communities, the change to a “no-kill” format should be applauded and certainly is consistent with the precautionary management strategy of the 1996 Magnuson-Stevens Act. It should be noted that many other tournaments have gone to an all-release format without a reduction in participation. NMFS restates advice of the 1988 Atlantic billfish FMP encouraging for all tournaments to adopt a catch-and-release philosophy.

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## **F. National Standard 9 - Bycatch**

Comment BLF-15: Atlantic Billfish released alive by recreational fishermen should not be considered bycatch because bycatch is undesirable and should be eliminated or minimized according to NS9, while the live release of billfish is an encouraged practice.

Response: NMFS agrees. Recreational anglers have voluntarily reduced landings of Atlantic billfish since the 1988 Atlantic billfish FMP, becoming essentially a catch-and-release fishery. NMFS realizes that live release of billfish is a beneficial practice and believes that establishing a catch-and-release fishery management program will further foster the already existing catch-and-release ethic of the recreational billfish fishermen. As a result of the establishment of this Program, all Atlantic billfish that are released alive, regardless of size, are not considered as bycatch, within the constraints of the Magnuson-Stevens Act and the NSGs. This decision is consistent with NS9, the eleventh objective of this FMP amendment, and the 1997 ICCAT recommendation to promote the voluntary release of Atlantic blue and white marlin. It is also important to note that despite the establishment of this Program, mortalities associated with all catch-and-release events must still be quantified, with results included in assessment of the stocks.

Comment BLF-16: The draft FMP amendment fails to reduce the most obvious cause of billfish mortality, which is pelagic longline fishing. NMFS should ban the use of pelagic longline gear inside the U.S. EEZ to eliminate billfish bycatch, and the United States should work through ICCAT to ban the use of this gear throughout the Atlantic Ocean.

Response: NMFS disagrees. The guidelines for NS 9 are clear in the need to address bycatch “to the extent practicable,” and to that end the draft FMP amendment addressed bycatch adequately. Following precedents set in other fisheries, the final FMP amendment identifies that billfish bycatch in the pelagic longline fishery is managed by the HMS FMP. This approach follows similar strategies utilized by NMFS to manage bycatch in other fisheries (e.g., juvenile red snapper bycatch in shrimp trawls is regulated through Amendment 9 of the Gulf of Mexico Shrimp Fishery FMP) in that the bycatch of a particular species is managed through the FMP that regulates the gear that it is caught on as bycatch. The FMP amendment also identifies a final action to establish an Atlantic billfish bycatch reduction strategy, using six components available in the HMS FMP. This bycatch reduction plan takes a holistic approach in complying with NS9 to reduce, to the maximum extent practicable, all bycatch in the pelagic longline fishery. The effectiveness of the bycatch reduction measures will be evaluated annually as part of the SAFE report for Atlantic billfish and HMS fisheries. An annual appraisal will include examination of current programs and research to see if Atlantic billfish bycatch can be reduced further, to the maximum extent practicable. Further, banning all U.S. longlining would not rebuild Atlantic billfish stocks. A much larger reduction in Atlantic-wide landings would be necessary, as discussed under comment BLF-1. A consequence of a ban of U.S. pelagic longlining would likely be an increase in foreign effort to fill the supply of tuna and swordfish historically provided by U.S. commercial fishermen, who are required to discard all billfish caught. Since foreign vessels retain billfish, an Atlantic-wide increase in billfish landings could be a direct



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result of increased foreign fishing activities. In addition, NMFS must comply with the Magnuson-Stevens Act, that specifies the NMFS must provide fishing vessels of the United States with a reasonable opportunity to harvest any allocation or quota of an ICCAT species agreed to by the United States. In preparing any FMP or amendment for Atlantic HMS, NMFS must evaluate the likely effects of conservation and management measures on participants in the affected fisheries, and minimize to the extent practicable, any disadvantage to United States fishermen in relation to foreign competitors.

Comment BLF-17: The proposed time-area closure of the Florida Straits during July through September may result in an increase in the pelagic longline catch of Atlantic marlin, and therefore this alternative should not be implemented. NMFS should spatially and temporally expand the proposed Florida Straits time-area closures and/or implement time area closures specifically to reduce bycatch of Atlantic billfish.

Response: In response to the comments that indicated the ineffectiveness of this closure on both swordfish and billfish, NMFS defers implementing a time/area closure until a later date. NMFS is committed to the use of time/area closures to reduce HMS bycatch and therefore, has scheduled an AP meeting on June 10-11, 1999, to discuss new analyses that outline a larger area than the Florida Straits closure. NMFS will also complete analyses with respect to redirected pelagic longline effort in other areas, and the effect on catch of target species and bycatch. AP members and the public will have an opportunity to comment on the alternatives.

Comment BLF-18: NMFS should establish a target percent reduction in billfish bycatch to be accomplished within a set time frame and implement that bycatch plan through measures such as time area closures, gear restrictions, and counting dead discards against quotas.

Response: NMFS disagrees. The Atlantic billfish bycatch reduction strategy does not establish a specific target for reductions in bycatch from the pelagic longline fishery, or other commercial gear that interact with billfish resources. There are a number of actions in the HMS FMP that address bycatch concerns, including quota reductions, time-area closures, and educational outreach programs. NMFS will evaluate bycatch rates once new bycatch measures, as well as limited access for the swordfish and shark fisheries are implemented in the pelagic longline fleet.

Comment BLF-19: NMFS needs to examine gear modification as a mechanism to reduce billfish bycatch.

Response: NMFS agrees. Gear modification is one of the six components of the billfish bycatch reduction strategy that is based on management tools available in the final HMS FMP. Additional research on the use of gear and gear configurations to specifically address minimizing bycatch and bycatch mortality is needed prior to implementation for the control of bycatch mortality. The HMS FMP will be the regulatory medium to implement gear modification measures as new information becomes available.

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## **G. Domestic Management Strategies: Harvest Controls and Retention Limits**

Comment BLF-20: NMFS should continue to prohibit commercial fishermen from possessing, retaining, or selling Atlantic billfish from their management unit.

Response: NMFS agrees. These commercial prohibitions are included as final FMP amendment actions and will be implemented in the final rule.

Comment BLF-21: NMFS should require catch-and-release only of Atlantic billfish by all recreational anglers. Allowing recreational anglers to land billfish is inconsistent and counterproductive with the objectives of the FMP amendment, and undermines the goals of the FMP. Closing the recreational Atlantic billfish fishery, except to catch-and-release supports the conservation ethic of this recreational user group; will maximize net economic benefits to the nation by managing the fisheries for long term optimum yield; is consistent with the ICCAT recommendation; and meets the critical U.S. leadership goal to promote international conservation.

Response: NMFS disagrees. Voluntary catch and release practices by recreational anglers have significantly reduced U.S. recreational landings, particularly when compared to Atlantic-wide landing levels. Further landing restrictions were implemented during 1998 and 1999 through two interim rule measures increasing the minimum size limit for Atlantic blue and white marlin. In 1996, the recreational angling community was responsible for 15 percent of total U.S. blue marlin mortalities, but this constitutes only 0.8 percent of Atlantic-wide blue marlin mortalities. U.S. recreational anglers account for even a smaller component of Atlantic-wide mortalities of white marlin. Increased minimum size limits included in the FMP amendment will result in fewer billfish being landed, as necessary to comply with the 1997 ICCAT recommendation. Therefore, additional decreases in U.S. recreational billfish landings are not necessary. However, NMFS will increase minimum size limits if additional reductions in landings are required to meet ICCAT obligations.

Comment BLF-22: NMFS should require all billfish tournaments to be catch-and-release only.

Response: NMFS disagrees. The 1988 Atlantic billfish FMP included a “no-kill” tournament alternative among the management options, and although it was ultimately rejected at the time, many tournaments have subsequently adopted a voluntary “no-kill” philosophy, or at least have encouraged a very limited number of fish to be landed through the use of minimum sizes greater than those imposed by NMFS. Alternative means to measure angler success in catching billfish, including observers and video technology continue to be developed and employed, and should help to alleviate the pressure to land billfish. The level of fishing mortality associated with billfish tournaments is minimal relative to required reductions in fishing mortality Atlantic-wide. The final FMP amendment retains the 1988 FMP admonition to encourage tournaments to continue moving to an all-release format.

Comment BLF-23: NMFS should require all recreational anglers to use circle hooks.

Response: NMFS disagrees. Further research is required on the impacts of circle hooks relative to hook-up rates, release mortality and hook design before the use of circle hooks can be required

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for these fisheries. NMFS is currently funding a study comparing traditional ‘J’ hooks v.s. circle hooks, and several articles have been published on the use of circle hooks in recent issues of sportfishing magazines. Billfish AP members said voluntary use of circle hooks will work better than mandating their use, therefore, circle hooks will be included in the outreach programs of the billfish FMP amendment.

Comment BLF-24: NMFS should not prohibit the use of multiple hooks in the Atlantic billfish recreational fishery. The precautionary approach, used to support this measure is contrary to the mission statement of NMFS as there is absolutely no science-based justification for this action. Limiting the number of hooks in a lure or bait is an unnecessary regulation because this will not enhance post-release survival rates; and will have no direct benefit to recovery of Atlantic billfish resources. This measure would significantly reduce angler hook-up rates, as well as have a negative economic impact on anglers by requiring purchases of new equipment and on tackle manufacturers.

Response: NMFS agrees. This measure was developed as a result of discussions with the Billfish AP, which includes representatives from the charter vessel industry, sport fishing groups, and FMC appointees familiar with the recreational billfish industry. The objective of this alternative was to reduce the probability of injury to gills, throat and eyes, thereby decreasing release mortality rates. After NMFS and the Billfish AP reviewed public comments on this issue, the majority of panel members rescinded their support of this measure.

Comment BLF-25: NMFS received several different comments regarding the use of dehookers, including: NMFS should require the use of dehookers by both recreational and commercial fishermen targeting billfish to reduce post-release mortality; NMFS should not mandate but promote the use of dehookers by both recreational and commercial fishermen; and NMFS should only allow recreational anglers to utilize hook-removal devices, but still require commercial fishermen to cut their gear to release a billfish because a dehooking device can not practically be used to release a billfish caught on pelagic longline gear, and will result in an increase in bycatch mortality as fishermen use this “loop-hole” try to save hooks; and NMFS should allow the removal of the hook by any means, provided that it can be accomplished safely and without increased damage to the hooked fish.

Response: The draft FMP amendment preferred alternative was to “allow the removal of the hook from recreational and commercially caught billfish.” NMFS maintains this action in the final FMP amendment and does not mandate the use of dehooking devices, but allows their use as a mechanism to reduce post-release mortality. There is no conclusive, peer-reviewed scientific results on which to base such a mandate at the time this FMP amendment was developed. However, commercially available dehooking devices have been effective in other commercial and recreational fisheries and have been successfully employed on removing hooks from other large fish. NMFS will include information on such dehooking devices in its pelagic longline workshops, as well as in its educational outreach programs. The final rule implementing the FMP amendment preserves the requirement that billfish that cannot be legally retained must remain in the water at all times, but no longer requires that the line be cut off. Instead, the final rule specifies that the hook may be removed, provided that the method of hook removal used

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does not harm the fish, and may enhance its survival. Proper handling techniques to remove a hooked billfish from commercial or recreational gear will also be included in the pelagic longline workshops, in order to enhance the effectiveness of this final action and minimize the mortality of all releases.

Comment BLF-26: It is impossible to determine the size of an Atlantic billfish without removing the fish from the water.

Response: NMFS disagrees. The 1988 Atlantic Billfish FMP noted similar comments, but cited advice from the SAFMC Billfish Advisory Panel which stated experienced billfish anglers and captains would have little difficulty in estimating the size of these fish quite accurately. The Plan's intent is "to encourage the release of all billfishes not needed for tournament competition or of trophy fish, and since tournament anglers generally have no difficulty estimating fish size and trophy fish would be substantially in excess of the minimum sizes, this is not expected to be a major problem" (SAFMC, 1988). The final rule implementing the FMP amendment preserves the requirement that billfish that cannot be legally retained must remain in the water at all times. NMFS continues to support this regulation and will use its educational outreach programs for recreational fishermen to instruct them on the proper handling and release of billfish to maximize their survivability.

Comment BLF-27: The recreational landings caps for Atlantic blue and white marlin are unfair and unnecessary. If adopted, this proposal would be a significant U.S. policy change for billfish management in the United States from one that controls mortality through size limits and the encouragement of catch and release, to a quota management system. Imposing quotas in recreational fisheries does not work. They are highly disruptive to the orderly conduct of the fishery and weaken confidence in the entire management system.

Response: The United States is compelled to comply with ICCAT recommendations as required under ATCA, therefore the United States, and all other ICCAT member countries/entities, must reduce *landings* (i.e., fish brought back to the dock vs. *catch* which is what is taken by fishing gear at sea) by at least 25 percent from 1996 levels. The true impact of this recommendation can only be evaluated in terms of Atlantic-wide reductions in marlin landings. The 25 percent reduction in blue and white marlin landings will result in reductions of U.S. recreational landings of approximately 21,000 pounds (9.52 mt reductions in marlin landings); however, on a larger scale, this recommendation will result in nearly a 3.4 million pound decrease (over 1,400 mt reductions in marlin landings) in Atlantic-wide marlin landings from 1996 levels by other ICCAT member countries. The final FMP amendment utilizes a size-based strategy to reduce U.S. recreational landings to required levels.

Comment BLF-28: NMFS received comments supporting and opposing the bag limit of one Atlantic billfish per vessel per trip. Comments that support the bag limit include: NMFS should implement the proposed bag limit for billfish; the bag limit of one billfish is appropriate in that it will result in reduced landings of marlin without creating a hardship for the charter boat industry since few billfish are retained by anglers; and a bag limit of one billfish would be consistent with Florida state regulations. Comments against this measure include: NMFS should eliminate the

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bag limit of one Atlantic billfish per vessel per trip; given the rare nature of billfish catches, and even rarer incidences of billfish landings, a bag limit of one billfish per vessel per trip would be ineffective in reducing landings by any significant amount; and this measure would have significant negative economic impacts on tournaments that have a "grand slam" category (i.e., prize for a blue marlin, white marlin and sailfish).

Response: Retention of more than one billfish during a recreational trip is relatively rare, but was included in the draft FMP amendment as part of a precautionary management strategy, and to ensure compliance with landing caps established by the 1997 ICCAT recommendation. In the interest of responding to public comment on the impact of implementing bag limits in the Atlantic billfish fishery, and in consideration of the ability of NMFS to manage landings (mortality) with size limits that can be adjusted through interim or proposed and final rule measures, the bag limit is a rejected management measure in the final Atlantic billfish FMP amendment. Reliance on size limits alone to control landings simplifies regulatory constraints and effectively accomplishes the same goal.

Comment BLF-29: NMFS should remove the provision providing the AA the authority to adjust the billfish bag limit with three-day notice, including to a zero bag limit. Imposing an adjustable bag limits for billfish is excessive and unnecessary regulation of this recreational fishery. Contrary to the Magnuson-Stevens Act and Regulatory Flexibility Act requiring the selection of the least burdensome alternative, the proposed measure imposes the greatest economic uncertainty in the billfish fishery. Tournaments could be canceled, or at least experience significant reduction in participation, solely on the *possibility* of a prohibition of landing any fish. NMFS could manage this fishery through a minimum size limit in such a way that landings are reduced by at least 25 percent, without closing the fishery

Response: NMFS agrees. In consideration of the ability of NMFS to manage landings (mortality) with size limits that can be adjusted through interim or proposed and final rule measures, the provision providing the AA the authority to adjust the retention limit to zero, is a rejected management measure in the final Atlantic billfish FMP amendment.

Comment BLF-30: NMFS should prohibit any billfish from being imported into the United States, regardless of where the billfish are caught (i.e., Pacific or Atlantic Ocean).

Response: NMFS agrees that considerations of prohibiting any billfish imports may be warranted in the future.

Comment BLF-31: NMFS received comments for and against the proposed preferred minimum size limits, including: the Atlantic billfish size limits in the draft FMP amendment should be implemented; the Atlantic marlin size limits proposed by NMFS are excessive, in that they will reduce landings more than necessary to comply with the 1997 ICCAT recommendation; and the minimum size limits should be in round numbers that are easier to remember, for example 100 inches LJFL for blue marlin rather than 99 inches

Response: NMFS agrees with comments supporting the proposed preferred minimum size limits. The increase in minimum sizes for Atlantic blue marlin to 99 inches (251 cm) LJFL, 66

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inches LJFL for Atlantic white marlin and 63 inches (160 cm) LJFL for sailfish is the final management action because it would reduce mortality rates by at least 25 percent for each of these overfished species at minimal short-term economic expense with long-term economic benefits. The final action was supported by the Billfish AP; most of the public responses also voiced support for this measure. The 1997 ICCAT recommendation requires a reduction of Atlantic blue marlin and Atlantic white marlin landings by *at least* 25 percent. ICCAT landings are reported by weight, therefore in order to comply with the 1997 recommendation, the 25 percent reduction in landings must be by weight, and not just by number. Choosing arbitrary minimum sizes would violate NS2, requiring that conservation and management measures be based upon the best scientific information available. Size and frequency distributions from billfish landed in tournaments sampled during 1995 to 1997 by the Recreational Billfish Survey were used to evaluate all size limit alternatives. The minimum size limits selected in the final FMP amendment reduce landings by the amount necessary to comply with the ICCAT recommendation, while maintaining the highest availability of billfish to the U.S. recreational fishery.

Comment BLF-32: NMFS received comments for and against the proposed preferred alternative to prohibit the retention of longbill spearfish. Comments against this measure include: lack of scientific information on this species is not an adequate reason to prohibit its retention; this measure would only hinder any research efforts; retention should be allowed until further data are made available that indicate this species is overfished; and as an alternative measure, NMFS should establish a toll free number for fishermen to report longbill spearfish landings and use this information for scientific purposes.

Response: The absence of adequate scientific information is not a reason for failing to take appropriate conservation and management measures. The precautionary management strategy asserts “states should apply the precautionary approach widely to conservation, management, and exploitation of living aquatic resources in order to protect them and preserve their aquatic environment ( 1995 FAO International Code of Conduct).” Longbill spearfish are rarely encountered by commercial fishermen or recreational anglers, and are generally not included as a target species in billfish tournaments. Therefore, this measure should have only minimal negative social or economic impacts. The status of spearfish stocks is unknown, but the rare nature of this species necessitates cautious management strategy to avoid any potential negative impacts to the stock.

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## **H. Domestic Management Strategies: Monitoring, Permitting and Reporting**

Comment BLF-33: NMFS should expand the use of sampling protocols utilized in the Gulf of Mexico to other Atlantic coastal areas to obtain a better monitoring of recreational billfish landings.

Response: NMFS agrees. The 1997 ICCAT recommendation for improvement in monitoring and data collection, as well as the establishment of landing caps for Atlantic blue and white marlin, has focused attention on the need for improvement in sampling and monitoring programs to ensure that the United States is in compliance with international agreements. The Gulf of Mexico program was instrumental in providing a historical framework for developing the notification and reporting requirements for billfish tournaments, but expansion of this program to other areas may not provide the sampling power necessary to ensure compliance with the ICCAT recommendation. Additional monitoring and reporting requirements have been added to the FMP amendment, including logbooks, permits and a voluntary observer program for charter-headboat vessels, and mandatory tournament registration.

Comment BLF-34: NMFS received several different comments on the proposed outreach programs, including: the proposed outreach programs for recreational billfish anglers are a waste of time and federal resources, recreational anglers already practice conservation in releasing over 90 percent of their catch; the proposed outreach programs will be a valuable addition to the FMP amendment depending on the level of cooperation with state and other federal agencies, fishing constituent groups, etc.; and, attendance at workshops and seminars held as part of this measure should be mandatory.

Response: NMFS disagrees that the proposed outreach programs for billfish anglers are a waste of time. Recreational anglers already release approximately 90 percent of their catch and NMFS has established a catch-and-release fishery management program in the final FMP amendment (see BLF-15). However, release of live fish does not guarantee their survival. Outreach programs established in this amendment will provide proper handling, tagging, measuring and release techniques in order minimize the mortality of all live releases, a proactive approach to meeting several objectives of this FMP amendment. Attendance at workshops by charter vessel operators and recreational anglers will not be mandatory, but will be encouraged and promoted through various constituent groups (e.g., TBF, CCA, IGFA, RFA), trade publications and federal and state agencies (e.g., NMFS Office of Intergovernmental and Recreational Fisheries, Sea Grant). It is important to note, however, the success of any outreach program is predicated on reaching the entire billfish recreational angler community, which may eventually require implementation of a permit or other registration procedure.

Comment BLF-35: Requiring billfish and other HMS tournaments to notify NMFS four weeks prior to commencement of the tournament is unnecessary.

Response: NMFS disagrees. This FMP amendment finalizes actions taken in an interim rule published on March 24, 1998 (63 FR 14030), and extended September 23, 1999 (63 FR 51859; September 29, 1998), by requiring all tournaments involving Atlantic billfish to provide notification of the purpose, dates and location of any tournament involving score keeping or

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awards for the capture of Atlantic billfish, at least 4 weeks prior to commencement. The 1997 ICCAT recommendation requires improvement in monitoring, data collection and reporting in all Atlantic billfish fisheries. Tournament notification measure is critical to developing a sampling frame for tournaments to allow for better monitoring, data collection, and reporting of billfish and other HMS tournaments. Tournament registration also gives NMFS sampling frame for billfish anglers, or at least those going to tournaments, to obtain information on participation level, angler effort, as well as social, economic and fisheries characteristic data. Even without sampling, information from the tournament registration forms will provide a general guide to the total number tournaments, their locations, number of participants, etc.

Comment BLF-36: The definition of an HMS tournament, including Atlantic billfish, as “any fishing competition involving Atlantic HMS in which participants must register or otherwise enter or in which a prize or award is offered for catching such fish,” is too broad.

Response: The definition of tournament is purposely broad so that as much data as possible can be collected to better identify the universe of billfish anglers. While all tournaments will be required to register, tournament directors must report only if selected.

Comment BLF-37: The Atlantic billfish tournament reporting form needs to be revised to more closely match the type of information that can practically be collected during a tournament

Response: NMFS will work with the SEFSC and also hold joint workshops with TBF, CCA, RFA, fishing clubs, and interested members of the public to discuss the best format for accurate reporting of necessary data.

Comment BLF-38: Tournaments selected to report should have 100 percent compliance and summary data should be made available to tournament directors, the HMS APs, and ICCAT Advisory Committee in a timely fashion, comparable to other fisheries managed under ICCAT quotas

Response: NMFS will work with the SEFSC to ensure that data from tournament reports are promptly collected, and processed to provide summary data on a timely basis. This information is part of the annual National Report, as well as the annual SAFE report.

Comment BLF-39: NMFS should include penalties and/or sanctions for failing to register/and or report catch data.

Response: NMFS agrees. The Magnuson-Stevens currently provides penalties and permit sanctions for regulations promulgated under the Act. The Magnuson-Stevens Act (section 308(a)) specifies that any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 307 shall be liable to the United States for a civil penalty. Section 307(1)(a) of the Magnuson-Stevens Act states that it is unlawful for any person to violate any provision of this Act or any regulation or permit pursuant to this Act. Failure to register and/or report, if selected, is a violation of the regulations and may be forwarded to NOAA General Council for review.



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Comment BLF-40: NMFS should require a recreational billfish vessel permit.

Response: NMFS disagrees. Encounters with billfish are generally rare, and landings are even less frequent, which makes scientifically-based sampling programs difficult to design and expensive to operate. While recreational vessel permits, such as those for Atlantic tunas, can be useful in determining the universe of potential participants, in the case of billfish, encounters are so rare relative to effort expended, a specific billfish permit may not be applicable to this type of fishery. Requiring landing tags may be a more feasible alternative that could also help identify the universe, since anyone who might potentially land a billfish would obtain a tag. Further research must be completed before a viable mechanism can be implemented to identify specific user-groups. However, a recreational vessel permit is included in the framework provisions for future consideration.

Comment BLF-41: NMFS should require the use of a billfish landing tag.

Response: NMFS disagrees. A billfish landing tag program can not be implemented until further research is performed on self-reporting systems, program design and logistics, as well as obtaining specific public comment on how best to implement an effective tag program. However, NMFS has included this monitoring tool as a framework provision because a landing tag system merits further consideration. As noted in comment BLF-40, landing tags may assist in identification of the universe of Atlantic billfish fishermen.

Comment BLF-42: NMFS violates the Magnuson-Stevens Act by not making a reasonable effort to quantify the number of vessels, effort, catches, landings, bycatch, and/or trends of landings for the recreational or charter fishing sectors in the draft Atlantic billfish FMP amendment.

Response: NMFS disagrees. The draft FMP provided all available information on effort, catch and landings, by species; estimates of the number of participants based on surveys of billfish anglers; and commercial pelagic longline and recreational bycatch. Information on the number of private and charterboats is more problematic, as noted in the FMP amendment, and is part of the rationale used to include mandatory logbooks and permits, voluntary observers for charter-headboats, and notification and reporting for all billfish tournaments. Additional measures have been included in the framework section of the plan that can be utilized to further improve monitoring of the recreational and charter fishing sectors.

Comment BLF-43: The draft Atlantic billfish FMP fails to recognize or utilize the cooperative tagging program.

Response: NMFS disagrees. Section 4.3.2 (Species Accounts and Essential Fish Habitat) in the draft FMP amendment included information for Atlantic blue marlin, Atlantic white marlin, and sailfish, on the total number of tagged and released fish over the last 43 years as part of the Cooperative Tagging Center (CTC) program. Information on the geographical area where most of the tagging activity occurred and during what times of year, the average distance tagged fish traveled before recapture, and specific movement patterns exhibited by some fish is also included in this section. The CTC database was incorporated into maps with other effort sources to assist with determining essential fish habitat designations. The life history characteristics, gleaned in part from the CTC data, were often a factor in the consideration of management actions for the

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final FMP amendment. Recent support of a single billfish stock is also based in part on tag recoveries, which indicate both trans-Atlantic and trans-equatorial movement of billfish.

Comment BLF-44: NMFS should eliminate mandatory permits and logbooks for charterboats.

Response: NMFS disagrees. The 1997 ICCAT recommendation also required improvements in monitoring, data collection, and reporting from all fisheries that encounter Atlantic billfish. The draft FMP amendment proposed the use of mandatory permits, logbooks and observers for charter-headboat operations, as well as tournament notification and reporting requirements to enhance the monitoring and reporting from the recreational billfish fishery. These management measures provide catch and effort data for Atlantic billfish that currently are not well quantified. While mandatory observers for charterboats have been modified to a voluntary program in the final FMP amendment (see BLF-45), NMFS maintains that permits and logbooks for charter/headboats must be mandatory.

Comment BLF-45: NMFS should eliminate the requirement for observers on charterboats. This measure is impractical, violates the privacy of recreational anglers, will deter business, and therefore, will have a negative economic impact on the charter fleet and associated industries. The probability of one of these vessels catching a billfish while having an observer on board is quite low. Funds would be better spent on expanding monitoring and observer coverage of the commercial pelagic longline fleet, where the opportunities for HMS interactions are much higher and data needs more critical to the health of billfish stocks. NMFS should use dockside samplers rather than mandating on-board observers for billfish charter vessels. At-sea monitoring of the charter fleet is unnecessary, since anglers release most of the billfish that are caught.

Response: NMFS has replaced the requirement for mandatory observers on charterboats, with a voluntary observer program. Observers on charter and headboats are a necessary component of fishery management to determine the accuracy of the data collected from the required logbooks, and will enable NMFS to directly observe recreational catch, hook-up and release rates, the condition of releases, species and size composition. This type of information can not be obtained solely by dockside or telephone interviews. The final action establishing a voluntary observer program will reduce negative economic impacts associated with requiring at-seas observer coverage, but if statistically meaningful samples can not be obtained, a mandatory program may be implemented in the future.

Comment BLF-46: The Atlantic blue and white marlin landing caps were generated from reported landings for 1996, when NMFS only minimally estimated landings based on samples of selected billfish tournaments and the Large Pelagic Survey. NMFS has proposed several improvements in monitoring in the FMP amendment that will increase the accuracy of landing estimates, which could unfairly reduce the number of billfish available to be landed, relative to 1996, in order to comply with the 1997 ICCAT recommendation.

Response: NMFS agrees that a statistically valid system must be developed to ensure an accurate comparison between 1996 and years after monitoring accuracy is increased. A review of all available information is currently being investigated to obtain the most accurate, scientifically-based landings for 1996. Other methods are also being developed to examine catch rates vs

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landing rates to determine if these values can be used to reflect the 25 percent reductions in landings between 1996 and 1998, resulting from the two interim rules (March 24, 1998, 63 FR 14030; and September 29, 1998, 63 FR 51859) implemented to increase size limits of blue and white marlin during 1998 to immediately comply with the 1997 ICCAT recommendation.

Comment BLF-47: NMFS should not change the fishing year. The proposed fishing year does not reflect the true operational time frame of the recreational billfish fishery and could disadvantage anglers and tournaments during the spring through potential regulatory changes implemented by NMFS to control landings to comply with ICCAT recommendation. Also the proposed June 1 to May 31 fishing year is incompatible with how ICCAT landings are reported by calendar year

Response: The June 1 to May 31 fishing year was selected as a final action for the Atlantic billfish FMP to allow NMFS to meet legal requirements for implementing ICCAT recommendations. A fishing year that starts in June would allow NMFS to comply with rulemaking and ATCA in implementing new management regulations that address ICCAT recommendations. A June to May fishing year would also be consistent with most other HMS fisheries, thereby meeting Objective 5 of FMP amendment. If it is true that landing caps for Atlantic blue or white marlin are exceeded, as determined by the most recent tournament and other landings data, it is possible that NMFS would raise the minimum size to avoid exceeding the landing caps, which could lead to spring tournaments being negatively impacted. However, it is anticipated that the size limits implemented in the final rule will be sufficient to avoid this possibility.

Comment BLF-48: NMFS fails to propose any adequate mechanisms to ensure U.S. compliance with the 1997 ICCAT recommendation for Atlantic billfish, contrary to the mandates of ATCA. The proposed minimum size limits and/or bag limits, and the provision providing the AA authority to adjust the retention limit to zero, will not accurately account for all recreational landings, as required under this ICCAT recommendation.

Response: NMFS disagrees. The draft FMP amendment proposed several new monitoring, permitting, and reporting requirements to better quantify the number of fishermen and effort. These requirements will be evaluated as part of the annual SAFE and National Reports and if determined inadequate, framework provisions in the FMP amendment will be utilized. Framework provisions include vessel permits for all U.S. registered vessels fishing recreationally for Atlantic HMS and a landing tag for all recreationally landed billfish. In the event that the ICCAT-recommended landing caps are exceeded, NMFS has the authority, under section 305 (d) of the Magnuson Stevens Act to take appropriate action.

Comment BLF-49: The expansion of the management unit for Atlantic blue and white marlin to the entire Atlantic Ocean, and implementation of regulatory actions for all Atlantic billfish under both Magnuson-Stevens Act and ATCA could result in the double reporting of recreational landings from U.S. citizens fishing in foreign waters.

Response: NMFS disagrees. The final FMP amendment includes a final action to expand the management unit for Atlantic blue and white marlin to the entire Atlantic Ocean, and implement

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regulatory actions for Atlantic blue marlin and Atlantic white marlin under both Magnuson-Stevens and ATCA. NMFS will work with the Department of State, and other agencies to ensure that fish are counted accurately and to ensure that accurate catch data are submitted to ICCAT.

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## I. International Rebuilding Strategy

Comment BLF-50: NMFS should negotiate with ICCAT to prohibit the landing of billfish throughout the Atlantic Ocean.

Response: NMFS disagrees. For some ICCAT member countries/entities, billfish are used for subsistence and/or as a source of income, while others may have a “no discard” policy. However, this does not preclude these ICCAT member countries/entities agreeing to management measures, including the 25 percent reduction in landings. The United States must continue to work with other members to reach a practical solution to rebuild Atlantic billfish resources. Indeed, the United States sponsored the 1998 ICCAT resolution calling for additional conservation measures to be undertaken by the SCRS following blue and white marlin stock assessments in 2000 and sailfish stock assessment in 2001, which will include the development of different stock recovery scenarios to levels that support maximum sustainable yield. All contracting parties have committed to providing the best-available catch-and-effort data in order to facilitate these analyses. Recovery of over-exploited (overfished) Atlantic billfish stocks will require a multi-national approach.

Comment BLF-51: It is mathematically impossible for NMFS to reduce U.S. billfish mortalities by 25 percent simply by placing restrictions on the recreational fishery. NMFS should apply the ICCAT-recommended 25 percent reduction to all U.S. sources of mortality, not just billfish landed by recreational anglers.

Response: While NMFS agrees that it is impossible to reduce billfish mortality by 25 percent, the 1997 ICCAT recommendation requires member countries/entities to “Reduce, starting in 1998, blue marlin and white marlin *landings* by at least 25 percent for each species from 1996 landings, such reduction to be accomplished by the end of 1999.” Although the majority of U.S. billfish mortalities reported to ICCAT are a result of dead discards from the pelagic longline fishery, the ICCAT recommendation only applies to U.S. recreational anglers because they are the only U.S. sector allowed to land billfish. The United States is obligated by ATCA to comply with this recommendation. An Atlantic billfish bycatch reduction strategy is established using the management tools included in the HMS FMP. Billfish mortality attributed to bycatch in the pelagic longline fleet is managed through the HMS FMP (see BLF-16 )

Comment BLF-52: The United States has existing regulations that limit billfish landings (size limits for recreational anglers, and prohibitions on commercial possession of Atlantic billfish), therefore the 1997 ICCAT recommendation does not apply to this country.

Response: NMFS disagrees. The 1997 ICCAT recommendation requires a reduction of Atlantic blue marlin and Atlantic white marlin landings by at least 25 percent from 1996 levels, and there is no provision exempting countries with existing billfish regulations that limit allowable landings. Each member is to advise ICCAT on an annual basis of measures in place or to be taken that reduce landings of marlins or fishing effort. The United States is complying with this recommendation by increasing the size limit of Atlantic blue marlin and white marlin, and continuing the commercial prohibition.

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Comment BLF-53: The United States should withdraw from ICCAT.

Response: NMFS disagrees. The United States must continue to take a leadership role to stimulate and promote conservation and rebuilding of Atlantic billfish stocks on an international scale. Actions taken by the United States alone can not sufficiently reduce billfish mortality levels Atlantic-wide to rebuild overfished billfish stocks. The fishing practices of other nations must be changed if Atlantic billfish stocks are to be rebuilt. Promotion of international conservation is the second objective of the Atlantic billfish FMP amendment and is a critical component of 304 (g)(1)(G)(i) of the Magnuson-Stevens Act.

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## **J. Economic Impacts**

Comment BLF-54: The draft FMP amendment overlooks the negative economic impacts of the preferred alternatives on recreational communities. Preferred alternatives will have negative economic impacts on not just direct participants in the Atlantic billfish fishery but travel-related industries; fishing related businesses; and local charities that receive large donations from tournaments proceedings.

Response: NMFS disagrees. The draft FMP amendment and the supplementary RIR/IRFA identified, based on the best-available information, the potential economic impact of the various management measures, including expenditures by recreational anglers. The IRFA thoroughly discussed the bag limit, along with the zero retention (bag) limit provision, and NMFS has dropped this measure from the final FMP amendment. NMFS has also established a voluntary observer program for charter/headboat vessels, in part to reduce the negative economic impacts of this measure on charter fleets, and has dropped the prohibition of multiple hooks.

Comment BLF-55: The preferred management measures selected by NMFS ignore the greater economic value of recreational fisheries relative to that of the pelagic longline commercial fishery.

Response: NMFS disagrees. The draft FMP amendment and the supplementary RIR/IRFA reference a 1989 study by Fisher and Ditton of Texas A&M University that provided an estimated economic impact (i.e., money spent) of the recreational component of the billfish fishery to be in excess of \$180 million. The draft FMP amendment and the supplementary RIR/IRFA also included an estimate of the total gross revenues forgone from dead discards of all billfish over the eight year period between 1998 and 1996, \$5.3 million, or \$664,648 per year. The draft FMP amendment specifically stated “While these values are far from insignificant, they are considerably less than the \$180 million spent each year by tournament anglers alone, and net economic benefits of two million per year.”

Comment BLF-56: NMFS should evaluate which industry (recreational or commercial) provides the most economic value to the United States and select management measures accordingly. The recreational billfish community annually generates millions of dollars for the U.S. economy (economic impact) in the pursuit of what essentially constitutes a catch-and-release fishery. Conversely, commercially caught billfish have no value because they must all be discarded. The total ex-vessel value of targeted commercial species (i.e., tuna and swordfish) contributes less to the national economy than recreational highly migratory species anglers. Therefore, NMFS should ban use of pelagic longline gear in the U.S. EEZ.

Response: NMFS disagrees. The final RIR/IRFA discusses common misconceptions when comparing recreational versus ex-vessel economic impacts. Additionally, in determining final management actions, the economic value of a fishery is an important consideration, however it is not the sole criteria. NMFS must consider additional factors and consider resultant potential impacts on each fishing sector. While NMFS recognizes the significant economic value of billfish recreational fishery, it does not support banning the use of longline gear for reasons given in the response to comment BLF-16.

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Comment BLF-57: Adjustment of the retention limit to zero or just the potential of such an adjustment will have significant economic impacts on the billfish recreational fishery, particularly on billfish tournaments. Planning tournaments takes many months, including solicitation of sponsors and local support (hotels, marinas, tackle shops, etc.), printing and distributing advertisements to attract anglers, and other long range planning activities. The potential of a prohibition on landings, especially with only 72 hours notice, will significantly impact the viability of tournament events.

Response: NMFS agrees and has removed the zero retention limit provision. The impacts of a zero retention (bag) limit, as well as the impacts of just a *potential* zero retention limit, were discussed in the supplementary draft regulatory impact review and initial regulatory flexibility analysis (RIR/IRFA) that was completed on December 29, 1998. NMFS is required under NS 8 to minimize economic impacts, to the extent practicable, and to consider MSA 600.345(b)(1) which states that “where two alternatives achieve similar conservation goals, the alternative that provides the greater potential for sustained participation of such communities and minimizes the adverse economic impacts on such communities would be the preferred alternative.” The IRFA provided a discussion of alternative measures to minimize impacts to small entities. As a result, the retention limit is a rejected alternative in the final FMP amendment because of the significant potential negative economic impact, and the availability of other mechanisms to ensure compliance with ICCAT-recommended landing caps, notably minimum sizes.

Comment BLF-58: NMFS should reduce billfish bycatch mortality by developing a buy-out program to reduce or eliminate pelagic longline vessel effort in the Atlantic Ocean.

Response: Consideration of a fishing capacity reduction plan, as well constraints on buyback programs and funding mechanisms were described in the draft FMP amendment. A buyout program can only be effective in the reduction of billfish bycatch if the overall effort (i.e., number of hooks in the water) is reduced. The final FMP amendment action to establish an Atlantic billfish bycatch reduction strategy includes buyout programs as one of six elemental components in the HMS FMP that may be used to effectively reduce effort and longline bycatch mortalities. NMFS may consider establishing a buyout program in the HMS FMP after the rebuilding program in that plan is established.

Comment BLF-59: Atlantic billfish tournaments that require landing billfish constitutes “trade, barter, or sale.” NMFS should prohibit cash/merchandise prizes in association with these tournaments to reduce the incentive to land Atlantic billfish.

Response: NMFS disagrees. Regulations state that the sale or purchase of billfish from its management unit is prohibited (50 CFR 635.31). A survey of tournament rules has shown that a billfish is not required to be given to the tournament to qualify for a prize, rather the fish only is subject to a measurement of its weight. The fish is ultimately retained as the property of the individual submitting the fish for entry in the tournament, therefore no purchase or sale of the billfish has occurred and the regulations have not been violated. Any tournament that violates this would be subject to civil action. The 1988 Atlantic billfish FMP encouraged all tournaments to move toward an all-release format, and many have subsequently adopted this approach, and yet, according to public testimony, still allow for well-attended tournaments with great economic



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impacts. The final FMP amendment does not prohibit cash/merchandise prizes in association with billfish tournaments.

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## K. Essential Fish Habitat

Comment BLF-60: The draft FMP amendment lacks an in-depth discussion of mitigating fishing impacts on EFH and does not provide a procedural framework to deal with this issue.

Response: The EFH interim final rule requires that FMPs contain an assessment of adverse impacts from the fishing gears that are used in EFH and that Councils act to minimize adverse impacts to EFH to the extent practicable. Although limited in scope, all available information on the impacts of HMS fishing gears and practices to habitat in scientific literature is included and discussed in the draft and final Atlantic billfish FMP amendment. The lack of information is noted in the amendment and is noted under the research and information needs section. As additional information becomes available it will be incorporated in future amendments.

Comment BLF-61: Sargassum should be designated as Essential Fish Habitat for Atlantic billfish and regulatory action should be taken to protect sargassum from HMS fishing gears and practices, as well as other fishing and non-fishing activities.

Response: Sargassum has been identified as an important biological component of EFH for many of the HMS species as a result of the input of the advisory panels. Sargassum harvesting is currently being proposed for management (to be phased out) under the jurisdiction of the South Atlantic fishery management council (SAFMC). The exact role of sargassum relative to the production of HMS is a matter of debate and current research, but the limitation of harvesting or possession by the SAFMC will restrict the removal of this component from HMS EFH.

Comment BLF-62: Due to the highly migratory nature of these species and the NMFS's definition that "Essential fish habitat means those waters and substrates necessary to fish for spawning, breeding, feeding, or growth to maturity", nearly everywhere the fish can be found could be considered "essential". With many EFH areas outside the U.S. EEZ, the ability to implement any meaningful habitat protection specifically for Atlantic billfish is limited.

Response: NMFS agrees that the ability to directly effect conservation of the habitats of billfish and other HMS may be somewhat limited because much of their range lies outside of US waters. The EFH regulations are clear that EFH can only be designated within the US EEZ, but it does allow for the identification of other important habitats outside the US EEZ. It encourages NMFS to engage in consultations, through the appropriate channels, that can further the conservation and enhancement of the key habitats outside the control of the United States. When activities are identified that are degrading the habitat of billfish, consultations will be initiated through agencies such as the State Department or international fishery management bodies, e.g., ICCAT or FAO.

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## **L. General Comments**

Comment BLF-63: The selected preferred alternatives do not reflect any of the advice given by the Billfish AP.

Response: NMFS disagrees. The advice from the Billfish AP was noted under each action in the draft FMP amendment. The agency's rationale for selecting preferred alternatives, including those that were not supported by the Billfish AP was also included in the plan. The Billfish AP was established under section 302(g)(4) of the Magnuson-Stevens Act , "to assist in the collection and evaluation of information relevant to the development of any fishery management plan or amendment." However, it is important to note that decisions and recommendations made by the AP are advisory in nature.